IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1258 OF 2005

Mr.Narendra Kantilal Palrecha ...Petitioner

Versus

State of Maharashtra & Anr. ...Respondents

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Mr.V.P.Shintre for Petitioner.

Ms.R.M.Gadhavi, A.P.P. for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 7, 2005.

P.C.

1. Heard Counsel for the parties. I see no reason to interfere with the conclusion reached by the Court below in rejecting the discharge application preferred by the Petitioner/accused No.3. Counsel for the Petitioner, however, submits that the Petitioner had no mens rea, for which reason, will not be liable for criminal action. I am in agreement with the observation made by the Court below that the said aspect will have to be

considered at the trial after evidence is adduced by the parties. Mens rea will be established at the trial. Counsel for the Petitioner would then contend that in the original complaint as filed, there is nothing to indicate complicity of the Petitioner in the commission of the offence. This submission clearly overlooks that lateron police investigation was undertaken and charge-sheet has been filed. Therefore, the prayer for discharge cannot be considered on the basis of allegations in the complaint, but the entire material will have to be reckoned for that purpose.

2. Viewed in this perspective, as the charge-sheet has been filed and there is supporting evidence to indicate complicity of the Petitioner in the commission of the crime, the question of discharge does not arise. To get over this position, Counsel for the Petitioner would contend that the amount has not been entrusted to the Petitioner directly, for which reason, no criminal action for offence under Section 406 of the Indian Penal Code can be proceeded against the Petitioner. This submission clearly overlooks that the

Petitioner is being tried for the said offence along with co-accused and Section 34 of the Indian Penal Code is invoked. The Petitioner has benefited on account of the action of the accused No.1. All those matters will be relevant for trial. Hence, rejected.

A.M.KHANWILKAR, J.